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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

7/28/98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Casino Data Systems

Serial No. 74/621,724

Bernhard Kreten for Casino Data Systems.

David Stine, Trademark Examining Attorney, Law Office 103 (Katherine Erskine, Managing Attorney).

Before Simms, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Casino Data Systems (applicant), a Nevada corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark OASIS for "computer hardware for use in a gaming environment, namely a network controller for player tracking in a casino."[1] The Examining Attorney has refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of two registrations,

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[1] Application Serial No. 74/621,724, filed January 17, 1995, based upon use in commerce since July 1, 1991.

both for the mark OASIS: Registration No. 1,456,289, issued September 8, 1987, Sections 8 and 15 affidavit filed, for computer programs and accompanying instruction manuals sold as a unit therewith; and Registration No. 1,803,656, issued November 9, 1993, for electronic gaming machines. The Examining Attorney and applicant have submitted briefs, and an oral argument was held.

The Refusal with Respect to Registration No. 1,456,289

With respect to this cited registration for computer programs and instruction manuals, applicant argues that third-party software, including registrant's computer programs, cannot be used with applicant's computer hardware because it is not compatible. Applicant argues that, even if registrant's computer programs were compatible, applicant's goods are complex and expensive computer hardware sold to a "niche" market, i.e., casino managers and owners, who will not confuse the source of applicant's network controllers for player tracking in a casino and registrant's computer programs.

Where a registration covering computer programs generally contains no further restriction with respect to the nature of the goods or the channels of trade in which those computer programs travel, we must assume that those computer programs cover a wide variety of applications and travel in all normal channels of trade for those goods. In

re Linkvest S.A., 24 USPQ2d 1716 (TTAB 1992). Accordingly, and because there is no specific or mutually exclusive limitation in the description of goods in the cited registration, we must assume, for our purposes, that registrant's computer programs include those designed to track players in a gaming environment. Accordingly, casino purchasing personnel, assumed to be familiar with OASIS computer programs for use in the gaming environment, who then encounter applicant's network controllers for use in the same environment, sold under the identical mark, are likely to believe that these goods emanate from or are sponsored by the same source. Compare In re Compagnie Internationale Pour L'Informatique-Cii Honeywell Bull, 223 USPQ 363 (TTAB 1984) and In re Graphics Technology Corp., 222 USPQ 179 (TTAB 1984).

In this connection, we note that applicant is not without remedy. Where the goods in a registration are broadly described, an applicant may seek to restrict the scope of the description by way of a petition to partially cancel or restrict that registration. See Section 18 of the Act, 15 USC §1068, and Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG, 34 USPQ2d 1266 (TTAB 1994).

The Refusal with Respect to Registration No. 1,803,656

With respect to this refusal on the basis of the registered mark OASIS for electronic gaming machines,

applicant admits that, while these gaming machines and applicant's network controllers may be purchased by the same casino managers and owners (brief, 5), applicant nevertheless argues that these goods are specifically different, would be used by different people and, more importantly, the common purchasers (casino managers and owners) are "an insular, sophisticated group" in the gaming industry who would not likely be confused as to the source of these products.

> The sophisticated purchasers to whom Appellant's hardware is directed would not be confused between the source of origin of a network controller used for player tracking which directly effects casino productivity and profitability and an electronic gaming machine which is exposed and entices customers to play one slot machine in favor of another. Thus, the electronic gaming machines recited in the relied upon registration are exposed to patrons of the casino, and the purchaser (casino owner or manager) of the gaming machine will have bought hundreds of slot machines, but only one network controller. The consumer who utilizes the electronic gaming machine is *never* exposed to Appellant's mark…
>
> … Prior to purchase, Appellant's consumers deliberate and are exposed to illustrative demonstrations in the intended casino environment. These types of distinctions are the hallmark of registrable trademarks under the law. Appellant's goods are specifically directed to buyers in the gaming industry. These buyers are professional buyers who are not likely to be confused compared to ordinary consumers.

Applicant's brief, 6, 7. Applicant also notes that there have been no instances of actual confusion involving registrant's mark OASIS for electronic gaming machines and applicant's mark for its goods.

We have carefully considered applicant's arguments but believe that the sale of applicant's OASIS computer hardware used in the gaming environment and registrant's OASIS electronic gaming machines is likely to cause confusion. Applicant's network controllers are closely related and complementary products to registrant's gaming machines. Applicant's goods may be used to monitor electronic gaming machines. Indeed, registrant's gaming machines and applicant's network controllers are goods which may be components of an electronic casino player tracking system. While it is true that registrant's gaming machines may actually be used by different persons (casino patrons), applicant has admitted that common purchasers may be exposed to both marks. While those who acquire equipment for casinos are undoubtedly relatively sophisticated individuals, we believe that even those individuals may be confused when such closely related goods as gaming machines and network controllers for player tracking in a casino are sold under the identical mark. Those individuals may well assume that the electronic gaming machines and applicant's network controllers are designed to be part of a single

system, or are otherwise produced by the same entity. In any event, we believe that these goods are so closely related that, when sold under the identical mark, confusion is likely.

Decision: The refusal of registration is affirmed as to both cited registrations.

R. L. Simms

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges,
Trademark Trial and Appeal Board